

STATE OF MINNESOTA

IN TAX COURT

ADM2021-004

**GENERAL ORDER: REMOTE TRIAL PROCEDURES<sup>1</sup>**

This Order sets forth general guidance to allow parties to prepare effectively for remote trial. The Minnesota Tax Court is committed to working with parties and practitioners to ensure it is a fair and effective medium for legal process. To the greatest extent possible, remote trials shall be conducted in the same manner as an in-person proceeding and are governed by the applicable rules of procedure and evidence.

The presiding judge will file a remote trial order in each case providing for the date and time for the trial, as well as more specific requirements concerning the filing and service of exhibits. The remote trial order may incorporate this general order by reference.

**1. General conduct**

Remote trials in the tax court take place on the Zoom platform. The court encourages parties and practitioners to gain familiarity with Zoom through practice, and to be patient with themselves and each other. Along these lines, please remember the remote courtroom—whether on Zoom or the telephone—is a courtroom and the conventional rules of courtroom decorum apply. By exercising the usual respect, waiting your turn to speak, and pausing after objections to await further direction, you can ensure an accurate record and minimize frustration.

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<sup>1</sup> The Minnesota Tax Court is not responsible for the contents of any off-site pages referenced in this Order, and such references do not constitute an endorsement from the court. These links are provided as an information service only.

Remote proceedings, specifically by Zoom, impose some new expectations and responsibilities on the parties and witnesses. It is each party's responsibility to prepare for these new aspects of remote proceedings. This includes preparing witnesses for their participation at trial. If a party is represented by counsel, these responsibilities fall to counsel.

## **2. Audio and video**

Parties should become familiar with the audiovisual component of remote proceedings. Trial participants—counsel, parties, and witnesses—should be in an appropriate location for hearings or trial. Such locations are:

- quiet (limited background noise as much as possible);
- isolated from others and with the least potential for distraction from others;
- have access to an internet connection that can handle the audio and video transmission and reception necessary for a Zoom meeting; and
- in an area with little visual clutter.

Participants also should take the following steps during Zoom appearances:

- the participant's face should be clearly and wholly visible in the video;
- consider use of virtual backgrounds carefully as they can be a major distraction;
- avoid backlighting;
- mute microphones when not actively speaking and unmute only during testimony;
- use a PC, laptop, or large tablet (not a smartphone) for the video portion of the hearing;
- consider use of dual monitors and a good quality web camera;
- consider audio quality (headsets tend to provide better results);
- close all other programs to avoid popups or accidental exposure in the event of screen sharing; and
- silence cell phones; they may be used only if necessary as backup to the Zoom connection.

## **3. Technical specifications**

Participation in a Zoom proceeding requires either a computer (highly recommended) or tablet (not generally recommended) with a camera and either speakers and an external microphone or

a headset with a microphone. The court does not recommend using a smartphone to participate in the video component of Zoom proceedings.

It is not necessary to subscribe to or purchase Zoom to access a trial in which you are counsel, a party, or a witness. The tax court will create an invitation and send a link to counsel or self-represented parties. The invitation will include a link to “Join Zoom Meeting” as well as a Meeting ID and Passcode.

If connecting to Zoom using a computer (whether desktop or laptop), you may connect via a browser such as Google Chrome, or using the Zoom app, which you will be prompted to download. If using a tablet (such as an iPad), you must download the Zoom app. Once you receive an invitation from the court, you can join the Zoom session by clicking on the link or by inputting the Meeting ID and Passcode into the Zoom app. You will have the opportunity to check your audio upon joining a meeting. Using headphones with a microphone provides better sound quality and reduces feedback.

The court likely will require counsel to participate in a technology check with court staff to acquaint you with basic Zoom functions and troubleshoot connectivity if necessary. The remote trial order may provide for this check, or the court may make an informal request that the parties meet briefly at an agreed time before trial. You may wish to use this technology check to practice some skills, including:

- Calling and examining a witness (in a practice environment);
- Laying a foundation for an exhibit as to which admissibility is disputed. The exhibit will be available to the witness, counsel, and presiding judge outside the Zoom platform (e.g., in hard copy form, on another electronic device, or on another screen on the same computer being used to participate in the Zoom session);
- Using the Zoom screen sharing function to display a document (such as a deposition transcript) used for impeachment purposes;

- Using the Zoom annotation tools by enlarging and highlighting an exhibit while examining a witness; and
- Posing objections and pausing to wait for further instruction.

The court strongly encourages trial participants to ensure the quality of their Zoom connection before the start of trial. [www.speedtest.net](http://www.speedtest.net) is a free internet connectivity speed test. It is critical to test connectivity in real world conditions such as internet use by multiple users and higher traffic during business hours. Connectivity may be influenced by the number of individuals participating in or attending trial.

The court also strongly encourages trial participants to practice various aspects of remote trial, such as finding the location of the audio and video mute functions, muting and unmuting, and ensuring they can both hear testimony and be heard when speaking. Counsel can assist parties and witnesses with a brief practice run before trial to troubleshoot problems. A judicial clerk will serve as the AV Manager for each trial; questions about the court's use of technology during trial, including questions about displaying exhibits on a shared screen, may be directed to that AV Manager.

You can find Zoom technical support details at: <https://support.Zoom.us/hc/en-us/articles/201362023-Systemrequirements-for-Windows-macOS-and-Linux>.

#### **4. Witnesses**

As noted above, remote proceedings are the same in all material respects as in-person proceedings. Witnesses may not access materials or devices or communicate with counsel or third parties during a remote trial in any manner that would be prohibited during an in-person trial. Certain additional procedures may be required to safeguard the integrity of remote proceedings. Accordingly, witnesses may not leave a remote proceeding unless and until

excused by the court (or during official breaks).

Parties (and counsel) should prepare witnesses with the following expectations:

- The AV Manager will admit trial attendees from a waiting room. Should a trial attendee leave, including during an official break, or be disconnected, readmission will always be into a waiting room.
- All individuals attending the trial will begin with active audio and video, at the time of their admission to the virtual courtroom. Subsequently, the AV Manager will mute everyone's audio except the court, the testifying witness, and the actively participating counsel.
- When testifying, the witness's audio and video must remain on at all times until the witness is excused.
- Generally speaking, other individuals should not be present with the witness during testimony. If this is not possible (such as for childcare), the parties should disclose the specific circumstances before trial.
- A witness's phone and other devices must remain off during testimony until the witness is excused. Witnesses may not communicate with anyone during testimony, except communications with counsel during official breaks.
- With respect to any exhibits provided to the witnesses before trial, witnesses are not to use or refer to those exhibits unless specifically directed to do so by counsel or the court.
- Witnesses may not use or refer to any documents, other than trial exhibits as directed, during their testimony. This includes, without limitation, looking up information on the internet, texting or emailing individuals who are not parties to the case, refreshing memory by referring to email or other records, or any other activities other than referring to trial exhibits as directed during their testimony.
- Unauthorized use of any document may lead to the disclosure of that document to the opposing party.
- Parties and witnesses may use Zoom breakout rooms during official breaks, or may leave Zoom during official breaks, and may confer with counsel. Conversations between witnesses and counsel during official breaks are off the record and any potential privilege applies.

Unlike the traditional in-court proceeding, where counsel and witnesses are present in court at the same time, counsel, parties, and witnesses are generally expected *not* to be in the same physical space during a Zoom proceeding. To the extent counsel and witnesses have a different expectation or understanding, or a witness needs the assistance of counsel during trial,

opposing counsel should meet and confer first and discuss any concerns with the court. Counsel should specifically confer regarding the following issues and advise the court of any agreements or issues to be resolved:

- Concerns about the feasibility or equity of remote trial participation, which must be raised with the court on a timely basis;
- Whether a party or parties may be in the same physical space as counsel;
- Whether witnesses may be in the same physical space as counsel for one of the parties;
- Whether third parties not part of the litigation may be in the room with a witness during testimony;
- Time zone considerations; and
- Interpretation/ADA considerations (see Accessibility, below).

## **5. Exhibits**

The remote trial order generally will provide instructions concerning the use of documents and exhibits at trial. Parties (and counsel) should prepare witnesses with the following expectations concerning the use of exhibits:

- Generally speaking, parties should expect to view their own copies of exhibits during testimony rather than using a shared screen. If a testifying witness cannot view an exhibit, counsel will share their screen.
- It is up to the discretion of parties (and their counsel) whether to view exhibits in electronic form or to print hard copies.
- Exhibits should not be permanently marked or altered in any way without the court's permission, however, whether print or electronic.
- Impeachment, rebuttal, and demonstrative exhibits that were not exchanged in advance generally will be displayed electronically via screen sharing.
- The official record of trial exhibits will be maintained by the court reporter.

Because each trial participant is responsible for maintaining a full set of identical trial exhibits, the exchange of exhibits before trial and submission of working copies to the court differs from the procedure for in-person trials and requires more advance planning. The remote trial order will provide instructions concerning the specific procedure for exchanging

documents among the parties. In general:

- The court strongly encourages parties to agree to documents whose authenticity is not disputed, and to file those in advance for the court marked as Joint Exhibits. This will facilitate admission of evidence at trial and reduce the number of copies that must be exchanged. Unlike an in-person trial, the parties will jointly move all exhibits identified on the Joint Exhibit List into evidence at the beginning of a Zoom trial for ease of document management.
- Any proposed exhibits the parties are not able to agree to as Joint Exhibits must be filed with the court and served on the opposing party, using commercially reasonable means (such as by access to a secure file hosting service, file sharing service, document cloud, or by email, mail courier, or other means).
- Counsel, or parties not represented by counsel, are solely responsible for providing all exhibits to their witnesses and to check before the start of trial to ensure each of their respective witnesses have received all exhibits. Failure to ensure a witness's receipt and review of relevant exhibits shall not constitute cause for continuance or delay.
- The parties may agree to designate one party to establish a file sharing service to serve exhibits and provide them to the court and witnesses.
- The remote trial order generally will provide instructions for requesting paper copies of exhibits if a witness is unable to receive or view electronic exhibits. The court, however, encourages the transmittal of electronic exhibits whenever possible. Nothing in this Order or any other order of the court prohibits parties, counsel, or witnesses from using their own paper copies of exhibits that were transmitted electronically.

The parties may agree, with the consent of the court, to further procedures for the distribution and management of additional exhibits during trial.

## **6. Accessibility**

Parties seeking reasonable accommodation for witnesses, parties, or counsel under the Americans with Disabilities Act or the Minnesota Human Rights Act, submit the form, "ADA Accommodation," available on the court's website. More information is available in General Order, ADA Accommodations.

If your request is for interpreter services, please initiate a request at least ten days before trial, if possible, by email to [MN.Accessibility.Taxcourt@state.mn.us](mailto:MN.Accessibility.Taxcourt@state.mn.us) or in writing directed to Court Administrator, Minnesota Tax Court, 245 Minnesota Judicial Center, 25 Rev. Dr. Martin

Luther King Jr. Blvd., Saint Paul, MN 55155. Please include the case name and docket number in your request. The court administrator will send an email to obtain further information about your language needs and arrange for an interpreter.

If it is not possible to make a request in advance, the court will attend to the request for accommodation or the request for interpreter services during the proceeding.

#### **7. Public access**

Tax court proceedings are open to the public. To maintain the integrity of remote proceedings, however, specifically pertaining to witnesses, a request by any member of the public to attend trial must be made to the court in writing to [info@taxcourt.state.mn.us](mailto:info@taxcourt.state.mn.us) at least 24 hours before the scheduled start of trial. No recording or broadcasting of any proceeding is authorized other than as provided in the remote trial order. Every individual attending trial must be identified on record.

#### **8. Troubleshooting**

It is important to maintain realistic expectations and a sense of humor about technology and remote trial. Invariably, something will go awry. There is no need to panic; virtually every problem can successfully be resolved in a short time with some patience.

Remote proceedings may need to pause in certain circumstances:

- In the case of audio issues, or if an active participant loses internet connectivity completely, the proceeding will pause until the participant resumes audio (which may include dialing into the proceeding using the call-in number).
- In the case of video issues, the affected party may dial in to the proceeding using the call-in number. If the court determines that telephonic participation is not suitable to protect the integrity of the proceeding, the court may recess until technical issues are resolved.
- If necessary, testimony will be repeated or read into the record to allow objections to be made.



A remote proceeding will not pause unless the court, court reporter, or an active participant (either of the actively participating counsel or self-represented parties, or the witness) are having audio or video problems or have lost their internet connection.

The Zoom platform has several pages available with troubleshooting tips.

- General FAQ for using Zoom can be found at: <https://support.Zoom.us/hc/en-us/articles/206175806-Top-Questions>
- Video/Camera issues—varies depending on OS and device: <https://support.Zoom.us/hc/en-us/articles/202952568-My-Video-Camera-Isn-t-Working>
- Audio issues: <https://support.zoom.us/hc/en-us/articles/202050538-Audio-Echo-In-A-Meeting>

BY THE COURT:

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Wendy S. Tien, Chief Judge  
MINNESOTA TAX COURT

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